

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 122 of 2016 (O&M)
Date of Decision : 02.06.2016

Hari Singh

....Appellant

Versus

Hukam Chand (Deceased) through LRs Sunil and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Som Nath Saini, Advocate
for the appellant.

Surinder Gupta, J.

CM No. 7197-C of 2016

This is application filed by learned counsel for appellant seeking interim order to restrain respondents from changing the nature of property in dispute in any manner by demolishing or alienating the same during pendency of case.

Learned counsel for the appellant has argued that he has to refer to merits of the case while pressing this application.

The appeal, which is fixed for 26.08.2016, is taken up on board today for hearing.

Applications stands disposed of.

RSA No. 122 of 2016

This is regular second appeal against the concurrent judgments of Courts below dismissing the suit of plaintiff-appellant seeking declaration to the effect that judgment and decree dated 25.11.1992, passed in Civil Suit No. 527/1992 is null and void and inoperative against the right of plaintiff to the extent of his 1/3rd share in suit property, which was ancestral property of plaintiff.

2. Learned counsel for the appellant has argued that dispute pertains to the house owned by Pem Raj father of plaintiff-appellant, who suffered collusive decree, transferring the ownership of suit property in favour of his son-Hukam Chand (since deceased now represented by legal heirs). This house and other property of Pem Raj was ancestral property in which plaintiff had 1/3rd share by birth.

3. Defendant no. 1-Hukam Chand in his written statement denied the claim of plaintiff alleging that he got the suit property under a family settlement on the basis of which Pem Raj suffered a decree dated 25.11.1992.

4. Learned Civil Judge (Junior Division), Gurgaon discarded the claim of plaintiff with the observation that plaintiff in order to prove his plea about nature of the property being ancestral and was inherited by Pem Raj from his forefathers, has not produced any evidence. Learned counsel for the appellant could not point out that the observation of learned Civil Judge (Junior Division) are based on misreading of evidence or any material evidence on record has been ignored while reaching this conclusion. He could not point out any document produced by plaintiff to prove that the suit property was joint Hindu family coparcenary property or ancestral property in the hands of Pem Raj. Learned counsel for the appellant has referred to observations made by Ist Appellate Court in para 13 of judgment to argue that these are not based on proper appreciation of evidence on record. The first observation recorded in para 13 of the judgment of Ist Appellate Court reads as follows:-

“13. In the present case, the plaintiff has filed the suit pleading the suit property to be the ancestral residential

house having been succeeded by Prem Raj from his ancestors. However, there is nothing on record to support the said plea of the plaintiff. Rather, the defendant has filed Ex. D-1, wherein the said plot has been shown to have been received by Prem Raj by transfer of the title by decree dated 29.01.1987 passed by the Court of the then Sub Judge Ist Class, Gurgaon. Thus, it is just and appropriate to draw an inference that the suit property was self acquired property of Prem Raj and he was entitled to deal the same as per his wishes.”

5. Learned counsel for the appellant while referring to second observation of learned Ist Appellate Court that plot of the house, in which he is residing, was given by *gram panchayat* to his father when he was alive, has argued that both these observations are against the record. The document (Ex. D-1) does not pertain to suit property and the appellant while appearing as PW-1 had nowhere stated that plot of the house, where he is residing, was allotted to his father.

6. I have carefully considered the submissions of learned counsel for the appellant but find that even if the same be accepted, it has no concern with merits of the case. Ex. D-1 is mutation no. 758, entered in the name of Pem Raj concerning the land bearing *khasra* no. 57 (1-0) on the basis of decree passed by learned Sub Judge Ist Class, Gurgaon dated 29.01.1987. Even if, it be believed that this property is not the property in dispute still the onus was on plaintiff-appellant to prove that the suit property was joint Hindu family coparcenary property. Learned Ist Appellate Court had drawn inference on the basis of this document that suit

property was self acquired property of Pem Raj. During course of arguments, learned counsel for the appellant was asked to pin point the suit property by its *khasra* number or municipal record number, which he could not do as the same does not find specific reference anywhere in the plaint. In para 1 of the plaint, it is mentioned that suit property is residential house fully described in para 1 of the plaint but in this paragraph no description of suit property has been given. As already discussed, even if, the decree (Ex. D-1) could not be connected with the disputed property, the onus was on plaintiff-appellant to prove that suit property is joint Hindu family coparcenary or ancestral property, which he utterly failed to prove.

7. Learned counsel for the appellant has argued that plaintiff has admitted that the land where he is residing was allotted by *gram panchayat* in the year 1981 during life time of his father in lieu of their land which was acquired for road. He has nowhere stated that this plot was allotted to his father.

8. Learned Ist Appellate Court in para 17 has made observation that plaintiff had admitted that plot of the house, in which he is residing, was given by *panchayat* to his father when he was alive. Though, plaintiff had not specifically stated that site of 1 *kanal* where he constructed the house was allotted to his father but still from the tone and tenor, it is clear that this plot was allotted in lieu of their land taken for the road. It is nowhere the case of plaintiff-appellant that his land was acquired by *gram panchayat*. He has stated to the extent that he does not possess any residential house of his own. This shows that he is sure in his mind that title of the plot where he constructed the house does not vest in him and he was not allotted the same. Even if the observation as made by Ist Appellate

Court be expunged or held to be wrongly made, still it has no impact on merits of case as the onus was on plaintiff-appellant to prove that suit property was ancestral property which he has utterly failed to prove by leading any evidence.

9. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

June 02, 2016

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**(SURINDER GUPTA)
JUDGE**